



Earlier this week, the Court approved the substitution of the undersigned as counsel for United Way.

Counsel for Plaintiff and United Way have previously represented to the Court and to each other that this case is suitable for, and should be, mediated. United Way therefore files this motion to request that the Court stay the proceedings and preserve the status quo pending a mediation. United Way seeks to mediate the dispute by December 14, 2007. Therefore, a brief stay of the proceedings will not prejudice the parties or cause unnecessary delay.

## **II. GROUNDS FOR A STAY OF THE PROCEEDINGS**

There is no dispute that this case should be mediated. Plaintiff's counsel first suggested on January 10, 2007, during a scheduling conference before Magistrate Judge Frances H. Stacy, that the parties should mediate the case. *See* Docket Entry dated January 10, 2007. Counsel for Plaintiff continued to raise the prospect of mediation with previous counsel for United Way throughout 2007, and noted during the hearing on October 12, 2007 that the case should be mediated. United Way agrees that a mediation within the next month and a half is in the best interest of all parties.

Counsel for Plaintiff has indicated to prior counsel for United Way, however, that they are opposed to a stay of the proceedings pending any mediation. Plaintiff's counsel also has stated – to both prior counsel and current counsel for United Way – that substantial documentation will have to be provided to Plaintiff's counsel regarding the pension data for the proposed class members before Plaintiff's counsel will agree to mediate. While current counsel for United Way has indicated that certain pension information can be produced prior to a mediation, the parties presently are unable to agree to the scope of the documentation.

United Way respectfully submits that a stay of the proceedings pending mediation is necessary to maximize the potential for settlement of this matter in light of the following motions currently pending before the Court:

- Plaintiff's Motion for Summary Judgment (Docket Nos. 41-56);
- Defendants' Motion for Summary Judgment (Docket Nos. 57-58); and
- Plaintiff and Defendants' submissions relating to the Rule 16 conference held on October 12, 2007 regarding certain definitions in the proposed notice of the class action and class composition (Docket Nos. 104-105).

A stay further is requested because United Way's new counsel has determined that additional filings relating to the above motions may need to be filed.

United Way therefore requests the Court to stay the proceedings and order that a mediation be conducted prior to the Court ruling on the above motions. Expedited consideration of this motion is paramount given that the above-described motions are ripe for determination.

In accordance with the foregoing, United Way requests that the Court consider this motion on an expedited basis, enter an order requiring the parties to mediate by December 14, 2007, and stay the proceedings until thirty (30) days after the mediation to allow the parties an opportunity to resolve any outstanding issues relating to the mediation. United Way further proposes that the order require the parties to agree to a mediator, and to notify the Court by November 12, 2007 if they cannot do so. United Way also requests that the Court order the parties, their counsel, and any insurers potentially responsible for a judgment to attend the mediation.

### **CONCLUSION**

Defendants United Way of the Texas Gulf Coast and United Way of the Texas Gulf Coast Cash Balance Plan respectfully request that the Court enter an order: 1) requiring the

parties to agree on a mediator or notify the Court by November 12, 2007 if they cannot do so, 2) ordering the parties to mediate the dispute by December 14, 2007 with the parties, their counsel, and any insurers potentially responsible for a judgment present at the mediation, and 3) staying the proceedings until thirty (30) days after the mediation occurs. Defendants further request all other relief to which they may justly be entitled.

Respectfully submitted,

FULBRIGHT & JAWORSKI, L.L.P.

/s/ Reagan M. Brown

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**CERTIFICATE OF CONFERENCE**

On or about October 23, 2007, prior counsel for United Way requested Plaintiff's counsel to agree to a joint motion to stay proceedings and mediation. Plaintiff's counsel responded that (a) they were opposed to a motion to stay the proceedings, and (b) while they were not opposed to mediation generally, they could not agree to participate in a mediation unless United Way first produced a substantial amount of documentation regarding pension information for persons within the class or classes Plaintiff believes constitutes the class in this case. On November 2, 2007, the undersigned had a telephone conference with Plaintiff's counsel regarding the subject matter of the present Motion. While counsel agreed to continue discussing these issues to determine whether an agreement might be reached, no agreement regarding this Motion was reached during the November 2, 2007 conference.

/s/ Reagan M. Brown  
Reagan M. Brown

**CERTIFICATE OF SERVICE**

This pleading was served in compliance with Rule 5 of the Federal Rules of Civil Procedure by electronic notification through the Court's electronic filing system and by certified mail, return receipt requested, on November 2, 2007.

/s/ Reagan M. Brown  
Reagan M. Brown